IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2126 OF 2005

Bhimji G. Kharat ..Petitioner
Vs.
Union of India & Ors. ..Respondents

Mr. R.P. Saxena, for the Petitioner
Mr. Ravi Shetty for respondents

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE : 5TH OCTOBER 2006.

P.C.:

. The petitioner herein had filed O.A. No.416 of 2004 before the Central Administrative Tribunal, CAT. The petitioner sought pension and other terminal benefits after his retirement on superannuation with effect from 31st July, 1997. The contention of the Respondent was that the petitioner was not paid from the Contingency Fund of India, but he was paid from the Public Fund Account and, therefore, not entitled to any benefit under decision No.2 of the CCS (Pension) Rules, 1972 as the benefit under the said scheme can be granted only to persons who are paid from the Contingency Fund. Pleas was also raised as to limitation. The learned Tribunal after considering the contention of the parties and its own judgments and other judgments came to the conclusion that the petitioner had completed the necessary years of service and as such was entitled to pension holding that the petitioner had put in total service of 12 years and 2 months. The learned Tribunal, therefore, directed that proportionate pension and gratuity be paid to the petitioner herein, however, restricted it to one year prior to filing of O.A. i.e. from 9th June, 2003 with a

direction that the entire exercise is to be done within three months from the date of receipt of the copy of the order. The order has been complied with.

2. The grievance of the petitioner is that the salary ought not to have been restricted to one year and for that purpose reliance is placed on the judgment of the Supreme Court in S.K. Mastan Bee vs. General Manager, South Central Railway & Anr., (2003) 1 SCC 184. That was a case of a widow who was entitled to family pension. Considering the illiteracy and the obligation of the employer the Court rejected the plea of laches and/or limitation and directed grant of pension with effect from 21st September, 1969 from the date when she should be entitled. Relying on this judgment learned Counsel states that the petitioner also ought to have been given the benefit.

. On the other hand on behalf of the respondents learned Counsel relies on the judgment in the case of S.S. Rathore vs. State of Madhya Pradesh, AIR 1990 SC 10. The issue in that case was as to the date when the right to sue was first accrued. In that case a suit had been filed for a declaration that the order or dismissal was inoperative and he continued to be in service. The suit was dismissed on the ground of law of limitation. It is in that context that the Supreme Court was considering the controversy. The Supreme Court in that case has not decided as to the benefits which can be given to a person, who moves the Court within the period of limitation. The observations in para.22 of the

judgment would not apply in a case where after an application is entertained and the issue is to the relief to be granted to a party. The Apex Court has also observed that ill behaves the Government to plead limitation against its own employees in the matter of their entitlement.

. Considering the above in our opinion if the petitioner had filed a suit, the limitation for arrears would have been three years. Merely because a party has to approach the Tribunal and there is a period of limitation for filing an application before the CAT would not result in denying such an employee the benefit for a period of 3 years before the party moves the Court or Tribunal.In the light of that we partly modify the order of the Tribunal and direct the respondents to pay to the petitioner pensionary benefits from 9th June, 2001. Considering that earlier benefits have been paid the benefits from 9th June, 2001 to 8th June, 2003 to be paid within eight weeks from today.

. Rule made absolute in the above terms. In the circumstances of the case there shall be no order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA, J.)